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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190312234-9412-01]

RIN 0648-XG898

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Revised 2019 Summer Flounder Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues revised specifications for the 2019 summer flounder fishery.

Due to recently available information from a benchmark stock assessment, changes to the specifications are necessary to better achieve optimum yield within the fishery while controlling overfishing, consistent with the Magnuson-Stevens Fishery Conservation and Management Act. This rule is also intended to inform the public of the changes to the specifications for the remainder of the 2019 fishing year.

DATES: Effective *[insert date of publication in the FEDERAL REGISTER]*, through December 31, 2019.

ADDRESSES: Copies of the revised specifications, including the Supplemental Information Report, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery

Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder fishery is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission as a part of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Summer flounder specifications must be implemented at the start of the fishing year on January 1, by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*. The FMP does not have any year-to-year quota rollover or other provisions that would ensure that catch constraints would have been in place on January 1, 2019, should no action have been taken. The final peer review and assessment results of the November 2018 summer flounder benchmark stock assessment were not available to be incorporated into the 2019 specifications by this deadline, so on December 17, 2018, initial 2019 specifications were published for the summer flounder fishery (83 FR 64482) based on scientific information provided by a 2016 assessment update. In that rule, it was explained that those initial specifications should be considered interim measures and that mid-year changes would be developed and implemented to address the benchmark assessment results. This action implements revisions to the summer flounder catch and

landings limits for the 2019 fishing year based on new information provided by the benchmark stock assessment.

The stock assessment was developed and peer reviewed in the 66th Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC 66). The final peer review and assessment results were made available in February 2019. This assessment included incorporation of revised Marine Recreational Information Program (MRIP) estimates of recreational catch, which has an important impact on estimated spawning stock biomass for summer flounder. Incorporating the revised MRIP time series increased the total average fishery catch from 1982-2017 by about 30 percent. While the magnitude of fishing mortality was not strongly affected, the increased catch has resulted in increased estimates of historic and current stock size. Based on the results of this benchmark assessment, the summer flounder stock is not overfished, and overfishing is not occurring. Previously, the stock was considered to be subject to overfishing.

The Council's Scientific and Statistical Committee (SSC) and the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) met in late February to review the assessment results and make recommendations to the Council for revised catch and landings limits. The SSC applied the Council's risk policy to derive recommended overfishing limits (OFL) and acceptable biological catch (ABC) values for fishing years 2019-2021. A different approach was used for deriving ABCs than in prior years. Rather than a varying ABC from year to year, a constant, averaged ABC value was derived for 2019-2021 to maintain more consistency in the fishery. This approach was

determined to be preferable for industry, to have a similar biological outcome to the varied ABC approach, and is consistent with the Council's risk policy. The MC, Council, and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board all recommended using the 3-year averaged ABC approach as it provides additional stability in the fishery and reduces the expected number of year-to-year regulation changes over this time period.

The Council and Board reviewed the new stock assessment information and SSC and MC recommendations at their joint meeting in March 2019, and took final action on their revised 2019 specification recommendations. In those recommendations, the Council and Board also proposed setting 2020-2021 catch and landings limits, but those specifications will be implemented in a separate action later this year. In addition, the 2019 recreational measures for summer flounder are being developed in a separate, concurrent action published elsewhere in this issue of the Federal Register.

This action is being published without prior notice and formal public comment period. The changes to the initial 2019 summer flounder specifications included in this action were anticipated during development of the original specifications. The public was also notified of the intent to publish revised specifications in the proposed and final rules of the original summer flounder specifications action (83 FR 57389, November 15, 2018; 83 FR 64482, December 17, 2018), as well as in the proposed rule for the 2019 summer flounder recreational measures that is being published elsewhere in this issue of the Federal Register.

Revised Specifications

This action implements the revised 2019 specifications (Table 1) as recommended by the Council and Board. This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch [35.6-cm] total length), gear requirements, and possession limits.

Table 1 -- Summary of Previous and Revised 2019 Summer Flounder Fishery Specifications

	Previous		Revised		Difference (%)
	million lb	mt	million lb	mt	
OFL	20.60	9,344	30.00	13,609	46
ABC	15.41	6,990	25.03	11,354	62
Commercial Annual Catch Limit (ACL)	9.18	4,164	13.53	6,136	47
Commercial Annual Catch Target (ACT)*	8.14	3,692	12.98	5,888	59
Expected Commercial Discards	1.47	667	2.00	907	36
Commercial Quota*	6.67	3,030	10.98	4,981	65
Recreational ACL	6.22	2,821	11.51	5,218	85
Recreational ACT	6.22	2,821	11.51	5,218	85
Expected Recreational Discards	1.08	490	3.82	1,732	254
Recreational Harvest Limit	5.15	2,336	7.69	3,486	49

*Commercial ACTs and quotas shown after accountability measures have been applied.

Accountability measures (AM) in the commercial summer flounder fishery require a scaled payback against the commercial fishery's ACT, based on both the amount of the overage and the status of the summer flounder stock, using the most recent biological reference points. An AM payback of 1.04 million pounds (472 mt) was applied to the commercial ACL in the initial 2019 specifications due to an overage in the 2017 summer flounder fishery caused by higher than expected commercial discards. The timing of that action did not allow for the results of the 2018 benchmark stock assessment

to be incorporated into the AM evaluation, so that initial payback amount was based on the status of the stock from the 2016 assessment update, which determined the stock was not overfished, but overfishing was occurring. The benchmark assessment has since updated the biological reference points and stock status for summer flounder. Based on the improved stock status, the revised payback for the AM is 547,000 pounds (248 mt). This reduces the revised commercial ACT from 13.53 million pounds (6,137 mt) to 12.98 million pounds (5,888 mt), and the subsequent revised commercial quota from 11.53 million pounds (5,230 mt) to 10.98 million pounds (4,981 mt).

Table 2 summarizes the revised commercial summer flounder quotas for each state, with the revised AM payback incorporated, using the allocated percentages defined in the FMP. This table also includes state-incurred overages from 2018, which are determined by comparing landings for January through October 2018, plus any unaccounted 2017 landings overages to the respective state's 2018 quota. These state overages are still deducted as pound-for-pound paybacks from the revised 2019 quotas. Delaware has an accumulated overharvest from previous years that is greater than its allocated amount of commercial quota for 2019. As a result, there is no quota available for 2019 in Delaware, and federally permitted vessels are prohibited from landing summer flounder in that state, unless additional quota becomes available through a transfer. There has been one state-to-state quota transfer in the 2019 fishing year from North Carolina to New Jersey, which is also shown in Table 2.

Table 2 -- Revised 2019 Summer Flounder State Commercial Quotas

State	FMP Percent Share	Revised 2019 Quotas ¹		Adjustment for Overages through October 31, 2018		State Quota Transfer		Final Revised 2019 Quotas ²	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.0476	5,224	2,369	0	0	0	0	5,224	2,369
NH	0.0005	51	23	0	0	0	0	51	23
MA	6.8205	749,091	339,782	-7,559	-3,429	0	0	741,532	336,353
RI	15.6830	1,722,462	781,295	0	0	0	0	1,722,462	781,295
CT	2.2571	247,895	112,443	0	0	0	0	247,895	112,443
NY	7.6470	839,869	380,958	0	0	0	0	839,869	380,958
NJ	16.7250	1,836,906	833,206	0	0	3,270	1,483	1,840,176	834,690
DE	0.0178	1,954	886	-55,047	-24,969	0	0	-53,093	-24,083
MD	2.0391	223,954	101,584	0	0	0	0	223,954	101,584
VA	21.3168	2,341,220	1,061,959	0	0	0	0	2,341,220	1,061,959
NC	27.4458	3,014,377	1,367,298	0	0	-3,270	-1,483	3,011,107	1,365,815
Total	100.00	10,983,000	4,981,805	0	0	0	0	10,973,488	4,977,491

¹The 2017 AM payback of 547,000 lb (248 mt) has already been applied to the total coastwide allocated quota.
²Total quota is the sum for all states with an allocation. A state with a negative number has a 2019 allocation of zero (0). Total final 2019 quota, less overages, does not include negative allocations (*i.e.*, Delaware's overage).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this interim final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law.

This interim final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This interim final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The Assistant Administrator for Fisheries, NOAA, finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). Additionally, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule. This action revises the 2019 specifications (*i.e.*, annual catch limits) for the summer flounder fishery to account for new benchmark stock assessment results, and increases the commercial quota by 65 percent and the recreational harvest limit by 49 percent. A delay in its effectiveness would unnecessarily disadvantage fishermen who wish to take advantage of the fishing opportunity that this action provides with increased quotas. A delay would be contrary to the public interest as it could create confusion and potential economic harm in the summer flounder fishery. Additionally, it could compromise the effectiveness of the new specifications in achieving optimal yield while still preventing overfishing. This rule should be effective as soon as possible to fully realize the intended benefits to the fishery.

This action, revising 2019 summer flounder specifications to account for benchmark assessment results, was anticipated during development and implementation of the original specifications action. Because of this, changes to catch limits as a result of

the assessment were already analyzed under the range of alternatives considered in the environmental assessment for the original action, and the potential for mid-year revision was discussed in the initial specifications (83 FR 64482). The public was provided an opportunity to comment on this likely outcome in late 2018. In the original action, we also notified the public of our intent to publish revised specifications once assessment information became available. The information for and development of this action was discussed and subject to public comment following the results of the benchmark assessment at a public MC meeting in February 2019, and the Mid-Atlantic Council Meeting in March 2019. In addition, the proposed rule for the 2019 summer flounder recreational measures, being published elsewhere in this issue of the Federal Register, describes the revised recreational specifications that appear in this action.

This rule is being issued at the earliest possible date. The results of the benchmark assessment became available in February 2019, and the Council and Board took final action on the revised specifications in March. The revised specifications substantially increase quotas and relieve restrictions on the fishery. The timely implementation of this action will help to ensure that industry has the opportunity to achieve optimal yield in the fishery, and access the increased quotas made available by the new stock assessment. A delay in implementing the new catch limits could prevent this fishing opportunity and potential economic benefit, which is contrary to the public interest.

Furthermore, this rule would not require a period for regulated parties to come into compliance with the new rules. Summer flounder fishery participants will not be required to purchase new equipment or otherwise expend time or money to comply with

these management measures. Rather, complying with this rule simply means adhering to the higher (less restrictive) catch limits and management measures set for the remainder of the summer flounder fishing year. Fishery stakeholders have been involved in the development of this action and are anticipating this rule.

Finally, if the 30-day delay in effectiveness were not waived, the lack of effective catch limits for summer flounder following the updated benchmark assessment results would present confusion to the cooperative management regime governing the fishery in the states. This rule needs to be effective, with the revised recreational harvest limit, before the Federal recreational management measures and state recreational management plans can be implemented. Summer flounder recreational seasons typically begin in May, and a 30-day delay would result in a substantial loss of the 2019 recreational fishing season, loss of fishing opportunity, and economic loss to related industries. If there was a delay, individual states would be unable to set appropriately adjusted commercial possession and/or trip limits, which apportion the catch throughout the year. This could result in further lost seasonal fishing and economic opportunity on the state level, as well as a temporally unbalanced supply that could disrupt prices in the coastwide market. Disproportionate harvest and confusion over state quota allocations could also make landings and quota monitoring difficult, affecting the timing of state closures later in the year.

For these reasons, there is good cause to waive the 30-day delay in effectiveness and these specifications shall be made effective on *[insert date of publication in the FEDERAL REGISTER]*.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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